

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA 019

IN THE MATTER OF:  
APPLICATION OF SOUTHWESTERN  
BELL WIRELESS L.L.C. FOR  
ARBITRATION UNDER THE  
TELECOMMUNICATIONS ACT OF 1996

Cause No. PUD 200200149

IN THE MATTER OF:  
APPLICATION OF AT&T WIRELESS  
SERVICES, INC. FOR ARBITRATION  
UNDER THE TELECOMMUNICATIONS  
ACT OF 1996

Cause No. PUD 200200150

IN THE MATTER OF:  
APPLICATION OF W.W.C. LICENSE, L.L.C.  
FOR ARBITRATION UNDER THE  
TELECOMMUNICATIONS ACT OF 1996

Cause No. PUD 200200151

IN THE MATTER OF APPLICATION OF  
SPRING SPECTRUM, L.P. D/B/A SPRINT  
PCS FOR ARBITRATION UNDER THE  
TELECOMMUNICATIONS ACT OF 1996

Cause No. PUD 200200153

ORDER NO. **466613**

HEARING: August 1, 2002, before the Commission *en banc*

APPEARANCES: Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"), J. Paul Walters, Jr.;  
AT&T Wireless Services Inc., Marc Edwards and Lawrence S. Smith;  
WWC License, LLC ("Western Wireless"), Mark J. Ayotte, Philip R. Schenkenberg and Dallas E. Ferguson;  
Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum"), Brett D. Leopold and Nancy Thompson;  
Public Utility Division, Maribeth D. Snapp, Deputy General Counsel and Elizabeth Ryan, Assistant General Counsel;  
The Rural Independent Local Exchange Companies, Ron Comingdeer, Kendall W. Parrish, and Kimberly K. Brown.

**INTERLOCUTORY ORDER**

**BY THE COMMISSION:**

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, the above-consolidated Causes come on for consideration and order, regarding the Arbitrator's Report and Recommendation on the unresolved issues of the interconnection agreements between the Commercial Mobile Radio Service Providers ("CMRS Providers")<sup>1</sup> and the Rural Independent Local Exchange Companies ("RLXCs").<sup>2</sup>

This Cause is an arbitration of interconnection agreements pursuant to the Telecommunications Act of 1996 ("ACT") [47 U.S.C. § 252]. The subject of the interconnection agreements in this Cause concern wireless to landline calls and landline to wireless calls between CMRS Providers and RLXCs. The parties agreed to many provisions of the interconnection agreements; however negotiations broke down over the reciprocal compensation arrangements for telecommunication transport and termination, and the rate for that telecommunication transport and termination. Accordingly, the CMRS Providers filed petitions before the Commission for arbitration of the unresolved issues pursuant to the Act.

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<sup>1</sup> Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"); AT&T Wireless Services Inc.; WWC License, LLC ("Western Wireless"); Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum")

<sup>2</sup> Atlas Telephone Company; Beggs Telephone Company; Bixby Telephone Company; Canadian Valley Telephone Company; Central Oklahoma Telephone Company; Cherokee Telephone Company; Chickasaw Telephone Company; Choctaw Telephone Company; Cimarron Telephone Company; Cross Telephone Company; Dobson Telephone Company; Grand Telephone Company; Hinton Telephone Company; KanOkla Telephone Association; McCloud Telephone Company; Medicine Park Telephone Company; Oklahoma Telephone & Telegraph; Oklahoma Western Telephone Company; Panhandle Telephone Cooperative, Inc.; Pine Telephone Company; Pinnacle Communications; Pioneer Telephone Cooperative, Inc.; Pottawatomie Telephone Company; Salina-Spavinaw Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Shidler Telephone Company; South Central Telephone Association; Southwest Oklahoma Telephone Company; Terral Telephone Company; Totah Telephone Company, Inc. and Valliant Telephone Company.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission having considered the recommendation of the Arbitrator, Administrative Law Judge Robert E. Goldfield, the record in the above-consolidated Causes and the oral argument of counsel, finds as follows:

The Commission finds that it has jurisdiction in the Cause pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 251 & 252; Title 17 O.S. 131 et seq., and Commission rules OAC 165: 55 et seq.

The Commission further finds that notice was properly given pursuant to the law and the Commission's rules.

The Commission further finds that the Order issued in this Cause is applicable to the parties of this Arbitration only.

The Commission further finds that the procedural history, summary of evidence and the standard of review set forth in the July 2, 2002, Report and Recommendations of the Arbitrator are, hereby, adopted as the procedural history, summary of evidence and the standard of review of the Commission. Furthermore, the Report and Recommendations of the Arbitrator, which is attached hereto as "Attachment A" is incorporated herein by reference.

The Commission further finds that the recommendations of the Arbitrator regarding the disputed issues between CMRS Providers and RTCs, which were not appealed by any party, are adopted as the findings of the Commission.

The Commission further finds that the recommendations of the Arbitrator regarding the unresolved issues of the interconnection agreements, which the RTCs appealed, is hereby adopted as the findings of the Commission. Specifically, the Commission finds as follows regarding the unresolved issues:

Unresolved Issue No. 1. What traffic within a Major Trading Area is subject to reciprocal compensation?

The Arbitrator recommended that all traffic exchanged between the parties, which originates and terminates in the same Major Trading Area as determined at the beginning of the call, is subject to reciprocal compensation. Such traffic shall be referred to as intra-MTA traffic hereafter.

Unresolved Issue No. 2. Do reciprocal compensation principles apply when the parties are not directly interconnected?

The Arbitrator recommended that each carrier must pay each other's reciprocal compensation for all intra-MTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.

Unresolved Issue No. 3. May the RTCs charge terminating access rates for any traffic in an intra-MTA area or Major Trading Area?

The Arbitrator recommended that calls made to and from CMRS Providers within the major traffic area are subject to transport and termination charges rather than interstate and intrastate access charges.

Unresolved Issue No. 4. What are the appropriate rates to be charged for transport and termination of traffic subject to reciprocal compensation?

The Arbitrator recommended that, at this time, a rate should not be set. Agreeing with Staff, the Arbitrator recommended that transport and termination be provided on a "bill and keep" basis until an individual study

establishes that it is economically and justifiably appropriate to do otherwise. If the Commission determines that an imbalance in the exchange of intra-MTA traffic is occurring, then a forward-looking cost study should be done to establish a rate.

Unresolved Issue No. 5. Is the Hatfield Associates Inc., (HAI) Model an appropriate model for determining rates in accordance with FCC rules and orders for Section 251 (b) (5) traffic?

The Arbitrator recommended that the HAI model was not an appropriate model. The Arbitrator stated that the model is suspect and unreliable due to the ability to manipulate inputs to obtain a desired result.

Unresolved Issue No. 6. Is it reasonable and in compliance with the FCC requirements for RTCs to utilize a composite rate?

The Arbitrator, for the following reasons, recommended that it was not reasonable to utilize a composite rate: (1) A uniform transport and termination rate is not appropriate because each company must have its own rate based upon its own costs; (2) It is inappropriate to develop costs on either an aggregate, weighted average, or composite basis; (3) It is inappropriate to average tariff rates to arrive at a uniform rate for every company; and finally (4) It is inappropriate to average the results of a cost study to support a rate.

Unresolved Issue No. 7. Is Western Wireless entitled to be compensated at the tandem interconnection rate?

The Arbitrator recommended that the rates are to be symmetrical utilizing the RTC's tandem interconnection rate.

Unresolved Issue No. 8. Is Western Wireless entitled to establish a single point of interconnection at a tandem switch and obtain a virtual NPA NXX in the RTC's end office switches?

The Arbitrator recommended that Western Wireless have the option of establishing local numbers in an RTC's switch without having a direct connection.

Unresolved Issue No. 9 (A). How should "Cell Site" be defined?

The Arbitrator recommended that the definition be consistent with the definition used by SWBT in its Wireless Interconnection Agreement, which is as follows: "Cell Site is a transmitter/receiver location, operated by the cellular carrier, through which radio links are established between the cellular system and mobile units. The area reliably serviced as a given call site is referred to as a 'cell.'"

Unresolved Issue No. 9 (B). How should "traffic" be defined?

The Arbitrator recommended that the definition be the definition used in 47 C.F.R. 51.701(b)(2) which states that telecommunications traffic is traffic exchanged between a local exchange carrier and a CMRS Provider which, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. § 24.202(a).

Unresolved Issue No. 9 (C). Should the contract contain incomplete sentences that do not clearly relate to any other sections?

The Arbitrator recommended striking those paragraphs that contained incomplete sentences that did not relate to any other section. (Paragraph 2.2, 2.3 and 2.4)

Unresolved Issue No. 9 (D). What language regarding Internet Service Provider ("ISP") traffic should be adopted?

The Arbitrator recommended that the language in Paragraph 2.5 of the CMRS Providers' proposed agreement be used, which primarily states that there is no internet service provider bound traffic between them and that internet service provider bound traffic will not be separately identified or accounted for under the agreement.

Unresolved Issue No. 9 (E)(1). What language should be adopted for Section 3.0 in the contract?

The Arbitrator recommended that the terms "transport and termination" in relation to CMRS Providers' traffic be utilized.

Unresolved Issue No. 9 (E)(2). Must a Type 2A and 2B Interconnection be physically located within the wire center boundary of the telephone company's tandem switch?

The Arbitrator recommended that a Type 2A and 2B connection need not be located within a RTCs' end office exchange boundary, but § 251(a) of the Act does not require the RTCs to construct facilities beyond their exchange boundaries to provide Interconnection at the request of a wireless carrier.

Unresolved Issue No. 9 (E)(3). When the percentages of usage on two-way interconnection trunks are reviewed and modified, shall charges between the parties be trued-up?

The Arbitrator did not recommended a true up, but rather recommended that if the parties can measure the actual minutes of use, they shall bill accordingly.

Unresolved Issue No. 9 (E)(4). Under what circumstances may a point of interconnection be changed?

The Arbitrator recommended that the point of interconnection should not be changed without agreement of the parties.

Unresolved Issue No. 9 (F). Should the contract contain a provision addressing circumstances when traffic levels are "de minimus"?

Since the Arbitrator recommended "bill and keep" as the primary compensation mechanism, a de minimus provision is not necessary.

Unresolved Issue No. 9 (G). Should the Commission adopt the CMRS Providers' proposal for determining the origination and termination points of a call?

The Arbitrator recommended Staff's position that the origination point of a call is the location of the initial cell site when a call begins.

Unresolved Issue No. 9 (H). What is the proper time period for payment of amounts due on a billing statement?

The Arbitrator, agreeing with the RTCs, recommended that the proper time period for payment is 30 days from the date of the billing statement.



Unresolved Issue No. 9 (I). Should the CMRS Providers be solely responsible for the services they provide to their end users?

The Arbitrator, agreeing with RTCs, recommended that each party be responsible for the services they provide to their respective end users, and, therefore language should be included to reflect the reciprocal nature of the parties' responsibilities.

Unresolved Issue No. 9 (J). (Has been resolved.)

Unresolved Issue No. 9 (K). Should the contract contain the proposed wording in Paragraph 14.21 involving expanded networks, and should the terms and rates of the Agreement apply to such expanded networks?

The Arbitrator recommended that CMRS Providers provide notice to the RTCs prior to implementation, and that the notice requirement also apply to affiliates of the wireless carriers.

The Commission further finds that with respect to Unresolved Issue No. 4, regarding the Commission utilizing the "bill and keep" method instead of establishing a reciprocal compensation rate, that the Commission appreciates the concern of the RTCs. However, although the Commission finds that there is a presumption of "balanced traffic," nothing in this Order precludes a RTC from filing an application to rebut that presumption by arguing that an imbalance of traffic is occurring and that the RTC is losing revenue. Upon an RTC filing an application, a hearing can be set where the RTC will have an opportunity to persuade the Commission through the presentation of individual traffic and cost studies, whereby, the Commission may set an appropriate reciprocal compensation rate for the RTC.

The Commission further finds that pursuant to Commission Order No. 462431, the parties are to prepare their respective interconnection agreements in conformance with the Commission's Order herein by August 22, 2002.

**ORDER**

IT IS, THEREFORE, THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the Report and Recommendation of the Arbitrator, attached hereto and marked Attachment A, is adopted by the Commission, and that the above Findings of Fact and Conclusions of Law, are, hereby, the Order of the Commission.

**OKLAHOMA CORPORATION COMMISSION**

**DISSENT**

Chairman Denise A. Bode

*Bob Anthony*

Vice Chairman Bob Anthony

*Ed Apple*

Commissioner Ed Apple

DONE AND PERFORMED THIS 9TH DAY OF AUGUST, 2002

*Peggy Mitchell*

Secretary, Peggy Mitchell